

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1414 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

H G AMIN

Versus

REGISTRAR GUJARAT AGRICULTURE UNIVERSITY

Appearance:

MR AD DESAI for Petitioners

MR JR NANAVATI for Respondent No. 1, 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 08/12/1999

ORAL JUDGEMENT

The petitioners are in employment of Gujarat Agricultural University. It is their case that they were recruited as Junior Clerk-cum-Typist, in the year 1962-63 in the department of Agriculture and since then they are rendering their services in that department. It is their case that on formation of Agricultural University in the year 1972, a common seniority list of all the staff was prepared. That, seniority list of Junior

Clerk-cum-Typist was published on 2.7.1976 wherein names of the petitioners have been shown at sr.no.6, 9 and 15 respectively. The said seniority list has been placed at Annexure 'A'.

2. It is further contended by the petitioners that the promotion to the post of Sr.Clerk was required to be considered on the basis of seniority amongst the Jr.Clerks and the said procedure is being followed by the respondent-University. That there is a ratio of 50% selection and 50% by promotion on the basis of seniority-cum-merits. Though the petitioners are seniors and are entitled to promotion to the post of Sr.Clerk, they were separated by their juniors in the year 1972 and that fact and irregularity has been brought to the notice of respondent No.2 by letter dated 19.7.1984, a copy of which has been annexed at Annexure 'B'. That it has been brought to the notice of the respondent that some junior persons who have been given promotion superseding the petitioners' right, are presently holding Office Superintendent and they are - (1) M/s. R J Parmar, (2) G D Patel, (3) H L Rathod, (4) P G Maulik and (5) C S Patel. That these persons are, in fact, junior to the petitioners in the cadre of Jr.Clerk but they were promoted as Sr.Clerk in 1972 superseding the seniority of the petitioners. That these persons were recruited in the year 1965-67 whereas the petitioners were appointed in the year 1962-63. That the seniority list of Sr.Clerk was published on 9.7.1984 by the second respondent wherein the petitioners' names have been shown at sr.no. 27,28 and 31 respectively. That the petitioners' took objection to that provisional seniority list by letter dated 10.8.1984. That even despite the said position, the petitioners were not considered senior to those persons by the respondent-University. That therefore, the University has not acted in accordance with the rules, and there is clear discrimination. Therefore, the petitioners say that the said action on the part of the respondent University is illegal and is against the provisions of rules. That it is also discriminatory and violative of Articles 14 and 16 of the Constitution of India.

3. Therefore, by this petition, the petitioners pray for appropriate writ, order or direction directing the respondents to give the petitioners the deemed date right from 1972 in the cadre of Sr.Clerk and the consequential benefits of seniority and promotion in the higher cadre, and the benefit of salary and the arrears of salary have also been claimed.

4. The respondents have appeared and filed affidavit

opposing the present petition. The opponents have denied that these petitioners were senior to those names mentioned in the petition. It has been contended by the respondents that the petitioners were appointed as Jr.Clerk-cum-Typists by the then Director, Institute of Agriculture at Anand as per the Rules and procedure prevailed at that time. That by Resolution No.11 dated 29.5.1972 it was resolved that the Institute of Agriculture at Anand be handed over to the Government so that it may form a part of the Government Agricultural University. That accordingly the Institute was handed over with its activities, personal property and funds to the State Government and then the State Government transferred the same to Gujarat Agricultural University on 1.6.1972 as transferred activities under sections 51 and 52 of the Gujarat Agricultural University Act, 1969 (for short, 'the Act'). The respondents further contended that section 23(1) of the said Act provides that designations, qualifications, methods of recruitment, pay and allowances and other terms and conditions of service of all the employees of the University and their powers and duties shall be such as may from time to time be determined by the statutes. That as per statute No.41, the recruitment and pay of the other employees were made by the Board of Management on 5th June, 1973, that thereafter, clause No.9 was inserted in the said statute by the Board of Management on 16.3.1974, which provides that during the period from 1.6.1972 to 31.5.1974 and then all the vacancies existing in the posts transferred to the University either Agricultural department or Animal Husbandry department etc. should be filled in from amongst the transferred employees of this Institution according to the rules of Recruitment of these institutions which were immediately in force prior to 1.6.1972. That in view of the aforesaid provisions, a circular was issued by the Director, Institute of Agriculture for inviting applications for the post of Sr.Clerk and other cadres from the employees of Institute of Agriculture, Anand, who were transferred to the Gujarat Agricultural University on 1.6.1972.

5. Respondents have further contended in the case of Jr.Clerk-cum-Typists, cadrewise separate seniority was maintained and that the seniority of the employees of the Institutes and the Colleges was common whereas in the case of the other schemes under the Institutes, the seniority was separate and the promotions were given on the basis of the seniority cum merits in both the aforesaid cadres. That the petitioners were serving as Typists in the following schemes:

1. H G Amin, Typist Dairy Science College
2. J B Patel, Jr. Typist R.B.R. Unit
3. T R Raj, Jr. Typist B.A. College of Agriculture

6. The respondents have further contended that by circular of 1972 applications were invited for selection to the post of Sr.Clerk and Sr.Typist. That the petitioners made applications for the said posts and they were called for interview on 8.6.1972 by the Selection Committee constituted by the Director of Institute. Interview was held and the Selection Committee prepared selection list and priority list. That petitioner No.1 stood at sr.no.3 in the cadre of Sr.Typists while other three were not selected for any post. That looking to the vacancy, appointment was given to only one person in the cadre of Sr.Typist and as such petitioner No.1 was not given appointment order as he was at sr.no.3 in the priority list. However, at appropriate time, the petitioners were promoted as Sr.Clerk on 9.8.1973 and 30.5.1974 respectively.

7. So according to the case of the respondents, the petitioners were never senior to others and, therefore, they could not be given deemed date with retrospective effect. Therefore, they claim that the petition be dismissed with costs.

8. I have heard Mr A D Desai, learned Advocate for the petitioner and Mr J R Nanavati, learned Advocate for the respondent University.

9. Mr A D Desai, learned Advocate has vehemently contended that the petitioners were all the way senior to other persons and yet they were not promoted as Senior Clerk whereas juniors were promoted. For the said purpose, Mr Desai has referred name of Mr H L Rathod. Now during the course of arguments, it was not shown to me that the petitioners and Mr. Rathod were falling to the same cadre and that the petitioners were shown as senior to Mr. Rathod at any point of time.

10. Mr A D Desai relied on a decision of this High Court rendered in Special Civil Application No. 370 of 1981 in the case of H L Rathod v. Gujarat Agricultural University & Ors. dated 5.2.1992.

11. Hon'ble Justice A N Divecha has delivered the said judgment and it would be pertinent to note that the petitioner of the said petition succeeded in the said matter since the University adopted the criteria of

merit-cum-seniority, whereas according to the rules available and applicable, the department was required to consider the seniority for promotion to higher posts. It would be relevant to note in this case that the petitioners have also produced seniority list in the cadre of Sr.Clerk as on 31.12.1983 at page 20. It would be important to note that name of Mr. Rathod has been shown at sr.no.20 whereas names of the petitioners are shown at sr.no.27, 28 and 31 respectively. So in this cadre, the petitioners have been shown as junior to Mr. Rathod.

12. Moreover, it is to be noted that the said seniority list discloses that Mr Rathod was promoted on 26.6.1972 whereas the present petitioners have been promoted in the cadre of Sr.Clerks on 10.8.1973, 9.8.1973 and 30.5.1989 respectively. This shows that Mr Rathod derived promotion earlier in time and, therefore, he was shown as senior.

13. During the course of argument, it has not been shown to me that Mr Rathod was junior to the petitioners and yet he has been shown as senior.

14. It appears that the said list at page 22 shows that Mr Rathod was appointed on 7.8.1965 whereas the other three persons were recruited in 1962, 1963 and 1972 respectively.

15. However, in 1972, the petitioner as well as Mr Rathod were considered for promotion. The department found Mr Rathod to be suitable for the post of promotion and therefore, Mr Rathod was promoted in 1972 and the petitioners were left out.

16. Again in the year 1973, the petitioners were considered and were found fit. They were actually promoted in 1973 and 1974. However, by that time Mr Rathod had already occupied the position in the cadre of Sr.Clerk right from 26.6.1972. Therefore, when the petitioners and Mr Rathod all were considered for the post of promotion and when Mr Rathod was found fit and suitable in 1972 and when the petitioners were not found suitable for the said promotion in 1972, it would not be open now to the petitioners to say that they should be placed ahead of Mr Rathod.

17. In that view of the matter, the above decision of this High Court will have no bearing on the facts and circumstances of the case before us.

18. Any way, it is not brought on record that the petitioners were senior to Mr H L Rathod or someone else and yet they have been placed below them. Under these circumstances, the petitioners are not entitled to a deemed date in the promotional cadre of Sr.Clerk from 26.6.1972, i.e. the date on which Mr Rathod was actually promoted in the cadre of Sr.Clerk.

19. During the course of argument, it has not been shown that some irregularity has been committed by the respondents in complying with the rules. Affidavit filed by the respondents makes it clear that under the circumstances of the case, the petitioners are not entitled to deemed date in the cadre of Sr.Clerk and, therefore, the petition is without any merit and consequently it deserves to be dismissed.

20. The petitioners are employees of respondents and their petition is being disposed of after more than 11 years. Under this circumstance, I am of the view that this is not a fit case wherein cost should be event.

21. This petition is, therefore, ordered to be dismissed with no order as to costs. Rule discharged.

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msp